IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6854 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

A K JOSHI

Versus

DAMAN-GANGA BHANDAR PETA VIBHAG

Appearance:

MR MUKESH H RATHOD for Petitioners

MR RJ OZA for Respondent No. 1

MR MUKESH PATEL AGP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/04/2001

C.A.V. JUDGEMENT

1. The five petitioner-workmen have challenged the award of the Labour Court, Navsari whereby, even as the termination of their service was held to be illegal, only

compensation and notice pay were awarded and reinstatement was denied. The impugned award was made on 26.4.1988 and after filing of this petition in 1988, it came to be admitted in 1991 and it comes to be decided now. The respondent employer, who happens to be the Engineer in-charge of Irrigation and Mechanical Stores Sub-division, has not cared to lead any oral or documentary evidence before the Labour Court and an affidavit on their behalf is filed in this proceedings at the last opportunity when the arguments were concluded.

2. The relevant facts of this case are in a very narrow compass. The petitioners were employed by the respondent as labourers on daily wage basis for varying periods exceeding continuous period of one year and discharged from service with effect from 20.8.1985 by the Deputy Executive Engineer on the instructions of the Superintending Engineer, Baroda. None of the applicable provisions of the Industrial Disputes Act, except the Rule of "last come first go", were applied while terminating the services and a defence was taken before the Labour Court that the petitioners were employed with the store section and the same having not been an "industry", the provisions of the Industrial Disputes Act did not apply. In these facts and circumstances, the Labour Court found that the services of the petitioners were terminated without payment of any compensation or notice and that they had completed more than one year of service under the respondent. However, it was held that it was the provisions of Sec. 25-FFF (2) and not those of Sec. 25-F of the Industrial Disputes Act that were attracted in view of the plea that the construction work connected with the store was completed and reinstatement could not be awarded if the workmen could not be given work. Thus, it was assumed on the basis of the written statement of the respondent, and without any evidence being led by them, that the project on which the petitioners had served was completed, that they were rendered surplus and that they cannot be absorbed in any other section. In short, the case of illegal and void retrenchment put up by the petitioners was converted into a case of closure and compensation in the impugned award.

3. The Deputy Executive Engineer has, as late as at the stage of final disposal of this petition in March 2001, filed an affidavit-in-reply on behalf of the respondent to state that the petitioners had no right or lien to continue in service, that their services were no more required and hence terminated pursuant to gradual closure of the division and after transfer of staff and equipments from the store in question, the same was

completely closed by 30.4.1998. Thus, the original plea of closure of the undertaking and the award of only closure compensation to the petitioners was sought to be justified by the learned Assistant Government Pleader on behalf of the respondent. The learned Assistant Government Pleader also sought to re-agitate the issue of the respondent not being an "industry" as the store section in question was a part of irrigation dam project. Besides being a mixed question of fact and law, the legal aspect thereof is squarely covered by a ruling of the Apex Court in the case of THE TUNGABHADRA BOARD, TUNGABHADRA DAM v. SRI EASU AND ANOTHER [1999 LAB.I.C. 3513] wherein it is held that irrigation department is an "industry" amenable to the jurisdiction of the Tribunal under the Industrial Disputes Act.

4. It is seen from the record of the case that the petitioners were discharged without following any legal procedure and the respondent had led no evidence before the Labour Court. The ground of partial closure of the store was neither mentioned in the written statement of the respondent nor even in the order of the Superintending Engineer on the basis of which the Executive Engineer had immediately terminated the services of the petitioners. Therefore, the partial, gradual or complete closure of the store section of the respondent remains a subsequent event of which cognizance could not have been taken by the Labour Court especially when no evidence was led by the respondent. In such circumstances, the conclusions to the effect that the petitioners could not be ordered to be reinstated and that provisions of Section 25-FFF (2) applied in the facts of the case are found and held to be perverse. The termination of the services of the petitioners was, therefore, in clear violation of the provisions of Section 25-F of the Industrial Disputes Act and, therefore, illegal and void ab initio.

5. However, in the facts as above, a simple substitution of the impugned award by an order to reinstate the petitioners with back wages would not meet the ends of justice and may not be workable if the store section in which they were serving as daily wagers has completely been closed in April, 1998. Although the learned counsel for the petitioners fairly left the award of back wages to the discretion of the court, the award of full back wages or any percentage thereof might be unreasonable in absence of any evidence regarding employment or unemployment of the petitioners during the long years of litigation. At the end of adjudication under the industrial law, the relief has to be

appropriately moulded in a just and reasonable manner in the particular facts and circumstances of the case. Therefore, it is thought fit to remand the case to the Labour Court for taking necessary evidence on the basis of which an appropriate award can be made.

6. In the result, it is held that the termination of the services of the petitioners with effect from 20.8.1985 was illegal and void, that the provisions of Section 25-FFF (2) of the Industrial Disputes Act did not apply in the facts on record and the impugned award dated 26.4.1988 made by the Labour Court, Navsari in Reference (LCA) No.51 of 1986 is hereby set aside. It is further directed that the said Reference shall stand remanded and reopened before the same Labour Court for the purpose of taking evidence regarding backwages and other reliefs including reinstatement, and/or back wages and/or compensation. The parties shall have the liberty to lead evidence and examine witnesses in that regard. And after appreciating the evidence that may be led before it, the Labour Court shall make an award afresh granting appropriate relief in accordance with law. This litigation having already consumed more than 15 years in the face of an utterly careless and casual approach of the respondent, it would be appropriate to award costs to the petitioners and direct the Labour Court to decide the Reference within six months of the receipt of the writ of this order. Rule is made absolute in terms as above with an order to the respondent No.1 to pay to each of the petitioners Rs.1,000/- by way of costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)